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TAGS: [PREL](#) [PTER](#) [UNSC](#) [SY](#) [LE](#)
SUBJECT: UNSC MEETING: BRAMMERTZ CAUTIOUS ON PROCEDURAL
ARGUMENTS FOR TRIBUNAL, BUT MICHEL COMPENSATES

REF: A. USUN 226
[1](#)B. STATE 35310

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Classified By: Ambassador Alejandro D. Wolff, per 1.4 (b) and (d).

[1](#)1. (SBU) After a public briefing to the Security Council by UNIIIC head Serge Brammertz on March 21 that just reviewed the findings in his last report (ref A), UNSC members proceeded to closed consultations to discuss the Commission's work in more detail. Nearly all delegations supported the GOL's request to extend UNIIIC's mandate for one year from June 2007, but only USUN, France, the UK, and Belgium said explicitly that the mandate should be extended now (three months before it will expire). Most delegations welcomed the professionalism of the Commission's work, but Russia, Indonesia, and South Africa expressed concerns about the pace of the investigation and urged UNIIIC to focus more on the Hariri investigation. Ambassador Sanders highlighted issues about Syrian cooperation with UNIIIC, but all other delegations either welcomed SARG efforts or ignored the subject. The UK joined Ambassador Sanders in making forward-leaning comments about the need to establish the tribunal, but most other delegations focused instead on urging the Lebanese to ratify the tribunal agreement and statute quickly. Russia did not address the question of the tribunal. Italy did not speak at all during the consultations.

[1](#)2. (C) Summary, cont'd. Although he had privately told USUN that he was prepared to make procedural arguments in favor of establishing the tribunal (ref A), Brammertz's answers to direct questions during consultations were more restrained. Asked if establishment of the court would help or hinder the Commission's work, Brammertz replied only that creating the tribunal was the "next logical step" in the investigation. Instead of arguing that the tribunal should be established because UNIIIC has evidence that it must transfer, Brammertz said the Commission has evidence it could transfer if the tribunal were created. UN Legal Counsel Michel, however, to whom Brammertz deferred most questions about the tribunal, was more forward-leaning and faithful to what we had urged him to say on this point. He argued that the UN/GOL tribunal agreement and statute had to come into effect soon to ensure a smooth transition between the court and the Commission, in order to serve the interests of justice, and because it would take the UN at least one year to make the tribunal operational after it has been established on paper. End Summary.

Broad Support for Mandate Extension

¶3. (SBU) Nearly all delegations supported the GOL's request, welcomed by the SYG and the Commission, that UNIIIC's mandate be extended for one more year from June 15, 2007. France, the UK, and Belgium joined Ambassador Sanders in calling for an early extension of the mandate, while most other representatives just expressed support for an extension. (Note: The UNIIIC's current mandate will expire on June 15, ¶2007. End Note.) Belgium added that the duration of the Commission's extension "should not be interpreted as an assessment of the time required to complete the investigation," nor should the extension "interfere with the establishment of the tribunal." Russia said it would "look at the request" from the GOL to extend the mandate. South African PR Kumalo, while noting he was not opposed to an extension of the Commission's mandate, expressed surprise that the UNSC might be called on to act three months before the current mandate expires. If an early extension would help the Commission, he wondered, perhaps it would be a good standard for the UN's other missions as well. Qatar said it was necessary to extend UNIIIC's mandate as proposed by the SYG.

Some Concern About Pace

¶4. (SBU) Most delegations welcomed the professional work of the Commission, but there were a few hints of concern about the pace of the investigation. While praising UNIIIC for "managing (the investigation) without excess emotion," Russia asked when the probe would be complete and urged the Commission to "resolve the status of detainees arrested" on its advice. (Note: This is a reference to the four Lebanese security officials arrested in 2005 on former UNIIIC Chief Mehlis's suggestion. End Note.) Indonesia urged the Commission to adopt "an expedited timeline" for its investigation that is still in keeping with international

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legal standards. While UNIIIC should "strengthen its focus" on the Hariri investigation, the SC should also be "more mindful" of assigning new tasks to the Commission -- such as providing yet more technical assistance to the GOL. South Africa also asked if the other 16 cases were sidetracking UNIIIC from the Hariri investigation. Qatar expressed hope the Commission would develop a "unified hypothesis" about the crime by its next report, but also urged UNIIIC to continue its work on the other 16 cases because of the possible links to the Hariri assassination.

Focus on Third-Country Cooperation, Not SARG

¶5. (SBU) Continuing a trend that began several months ago when Brammertz first characterized SARG cooperation as "generally satisfactory," most delegations welcomed Syrian cooperation with the UNIIIC. Ambassador Sanders highlighted the "variable quality" of answers given by some Syrian witnesses to UNIIIC questions and called for full and unconditional SARG cooperation, but the French, British, and Belgians avoided the subject and other usually sympathetic delegations (Slovakia, Ghana) welcomed SARG efforts. Turning to third-country cooperation with the Commission, Russia argued that its January 2007 efforts in the UNSC to demand the names of the non-cooperating states had helped ensure that the ten countries with overdue requests eventually cooperated with UNIIIC. South Africa and Indonesia, reprising their positions during the January 2007 Council discussions, asked why the Council was using a double-standard to judge efforts by the SARG and other countries. Asking Brammertz to explain why he had chosen to write that "almost all" versus "all" outstanding issues had been resolved, South African PR Kumalo again requested the names of the states that had not yet fully cooperated.

Looking Forward to the Tribunal

16. (SBU) Several delegations noted the importance of establishing the Special Tribunal for Lebanon, but most underscored that the Lebanese parliament should ratify the agreement. Drawing from ref B, Ambassador Sanders emphasized U.S. commitment to timely establishment of the tribunal and expressed serious concern that the Lebanese parliament had not yet been allowed to convene to vote on the UN-GOL tribunal agreement, despite majority support for such a vote.

UK PR Jones-Parry said it was crucial that the tribunal be established early, "ideally with the agreement of the Lebanese, but otherwise the UNSC will have to address what to do." China expressed hope that the "Lebanese factions would resolve their differences on the establishment of the tribunal through political dialogue," while Russia avoided the issue altogether. Interestingly, while calling on the Lebanese to reconcile, Qatar said evidence would ultimately have to be transferred to a tribunal and that "trying those accused would contribute to the rule of law in Lebanon." Slovakia and Panama urged the Lebanese to ratify the agreement soon, while Ghana drew a link between completion of the Commission's investigation and establishment of the tribunal.

All (Mostly) Well With UNIIIC Investigation

17. (SBU) Asked how long his investigation would last, Brammertz argued it is "impossible to give a concrete date" and said it could be over "in a few months time, or longer." Deflecting concerns that extending technical assistance to the GOL in the other 16 cases had distracted the Commission from its primary task of investigating the Hariri assassination, Brammertz said UNIIIC had brought in "external resources" such as forensics experts to help the Lebanese authorities. This external help has had a "limited impact" on the Commission's resources and "no negative impact" on UNIIIC's work on the Hariri investigation. In fact, Brammertz said, assisting the GOL in the other 16 cases has helped the Commission establish links between the Hariri murder and other crimes and has shed more light on the Hariri assassination itself.

18. (SBU) In response to questions from South Africa about third-country cooperation, Brammertz described how he had met with the ambassadors of the ten countries whose responses were overdue. Although he had already received written assurances of support from all ten countries, Brammertz said he concluded in his report that "almost all" versus "all" outstanding matters had been resolved because some of the

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countries had not yet submitted all of the information they had agreed to provide, although Brammertz said he expected to receive it soon. He added that UNIIIC now considers the issue resolved. Asked about operational support for UNIIIC, Brammertz mentioned difficulty in hiring Arabic translators/transcribers. Although the UN had contacted various international institutions and posted worldwide job notices on its internal system, only three out of 27 UNIIIC translator positions had so far been filled. Brammertz added that it also continues to be difficult to convince investigators and law enforcement officials to accept short-term job contracts in Beirut with the Commission.

Brammertz Cautious on Tribunal

19. (C) Although he had privately told USUN that he was prepared to make procedural arguments in favor of establishing the tribunal (reftel), Brammertz's answers to direct questions during consultations were more restrained. Asked by Ambassador Sanders if establishment of the court would help or hinder the Commission's work, Brammertz replied that creating the tribunal was the "next logical step" in the

investigation. Without the court, the judicial process "would not make sense" because all UNIIIC can do is collect the facts, whereas a prosecutor must examine the evidence to see if he can bring a case to trial. (Note: Brammertz declined to explain, as he had during his meeting with Ambassador Wolff, how creating the court would encourage witnesses to come forward and vice versa. End Note.) In response to another question from Ambassador Sanders about whether UNIIIC is in a position to transfer evidence to a prosecutor, Brammertz maintained that "once the decision is taken" to establish a tribunal, the Commission has "thousands of pages" of processed material that it could transfer. (Note: Although his answer was still useful, Brammertz declined to say that the tribunal should be established because he has evidence to transfer to a prosecutor. End Note.)

But Michel More Forward-Leaning

¶10. (SBU) Michel, to whom Brammertz deferred most questions about the tribunal, argued in line with our previous prodding that the court had to be established soon for procedural reasons. Explaining that the transition between the two bodies is governed by the UN/GOL tribunal agreement, Michel noted that that Article 19(2) specifies that the tribunal will begin functioning on a date to be set by the SYG, in consultation with the Lebanese government, taking into account the progress of the work of the UNIIIC. Recalling Brammertz's statements that UNIIIC's investigation is "quite advanced," Michel observed that Article 17(a) provides that appropriate arrangements shall be made to ensure a coordinated transition from the activities of the UNIIIC to the activities of the tribunal's prosecutor's office. In order to "avoid a break" between the two bodies, therefore, it was important for measures to be taken soon to establish the tribunal.

¶11. (SBU) Michel also stressed that the interests of justice would be served by early establishment of the tribunal. Under the UN/GOL tribunal agreement, the pre-trial judge can take measures to afford greater protection for suspects, which suspects that the UNIIIC identifies to the Lebanese authorities for arrest do not enjoy. Moreover, Michel said the tribunal will have an independent role in evaluating the evidence the UNIIIC provides to the prosecutor's office -- Article 19 of the draft statute for the tribunal stipulates that the trial chamber will decide whether to admit the evidence provided to the tribunal by the UNIIIC, pursuant to international standards on collection of evidence. (Note: Although Brammertz has said UNIIIC is collecting evidence based on international standards of admissibility, the implication was that under a tribunal, evidence would come under greater scrutiny, to the benefit of suspects. End Note.)

¶12. (SBU) Lastly, Michel argued that because it was "optimistic" to think that the UN could take all the steps necessary to make the tribunal operational in less than one year, the Lebanese should ratify the tribunal agreement and statute soon to ensure a coordinated transition between the Commission and tribunal. Outlining the steps necessary, Michel said the UN would have to agree on a seat for the tribunal with the GOL and the host country, raise funds to cover the first year's expenses and promises for the

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following two years, and then hire its staff. Michel specifically refuted the idea that the tribunal could first hire a prosecutor to take over the staff and the work of the Commission. First, the registrar's office would have to be established and staffed, and then a pre-trial judge could be appointed. Only then could the prosecutor's office be established, because the prosecutor must work with the pre-trial judge's assistance.

¶13. (C) The March 21 consultations were a good first step towards laying the groundwork for possible invocation of Chapter VII UNSC authority to establish the tribunal, but more needs to be done. Although Brammertz's comments about the tribunal were helpful, he declined to make the crucial argument that he has reached a point in his investigation in which it is objectively necessary to establish the court. Based on our private discussion with him, however, we know that he is now more willing than ever before to entertain making such arguments. Depending on the timing of a possible recourse to Chapter VII, we therefore have an opportunity over the next few months to persuade Brammertz to make the procedural case for the tribunal in both his written report to the Council and in his oral remarks. Success on that measure will improve considerably our chances of securing a Chapter VII resolution on the tribunal.

WOLFF